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**COPY**

OCT 01 2007



MICHAEL K. JEANES, CLERK  
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7  
8 ARIZONA SUPERIOR COURT  
9 MARICOPA COUNTY

10 GILBERT UNIFIED SCHOOL  
11 DISTRICT NO. 41,

12 Plaintiff,

13 v.

14 STATE OF ARIZONA, STATE  
15 BOARD OF EDUCATION, and TOM  
16 HORNE, Superintendent of Public  
17 Instruction, in his official capacity,

18 Defendants.

No. CV2007-017981

**VERIFIED COMPLAINT FOR  
SPECIAL ACTION, DECLARATORY  
AND INJUNCTIVE RELIEF**

19  
20 Gilbert Unified School District No. 41 ("Gilbert Public Schools") alleges:

21 **INTRODUCTION**

22 1. Arizona's performance-incentive program for teachers, known as the  
23 "Career Ladder Program" (or the "Program"), described in A.R.S. § 15-918 *et seq.*,  
24 provided over \$74 million in funding during the 2006-2007 school year to the 28 Arizona  
25 school districts participating in the Program for the purpose of allowing those 28 Arizona  
26 school districts (but none of the other 209 Arizona school districts) to attract, retain, and  
27 motivate good and experienced teachers and to provide the students in those 28 districts  
28 the educational benefits of the Program.

1           2.     In October 2006, Gilbert Public Schools contacted the Arizona Department  
2 of Education ("DOE" or the "Department") and expressed its desire to apply to participate  
3 in the Program so that it too could enjoy the Program's benefits. In response, the DOE  
4 informed Gilbert Public Schools that it could *not* apply for inclusion in the Program  
5 because there were no funds available to expand the Program beyond the districts  
6 currently participating. [See Exhibits 1-2]

7           3.     Accordingly, during the 2007 Legislative session, Gilbert Public Schools  
8 requested that the Legislature appropriate additional funds to the Career Ladder Program  
9 so as to allow for expansion of the Program. However, the Legislature did not appropriate  
10 additional funds allowing for the expansion of the Program.

11          4.     When the Career Ladder Program was first created by the Arizona  
12 Legislature more than 20 years ago, expansion of the Program statewide was envisioned.  
13 Yet, since 1994, the Arizona Legislature has not appropriated the additional funds that  
14 would allow new districts into the Program despite the clear intent to expand the Program  
15 statewide, nor has it taken any steps to permit nonparticipating districts to benefit from the  
16 existing funding.

17          5.     Just 28 school districts (out of 237 statewide) participate in the Career  
18 Ladder Program and receive funding through the Program.

19          6.     Nonparticipating districts such as Gilbert Public Schools are at a  
20 disadvantage when it comes to attracting and retaining good and experienced teachers.

21          7.     The disparity in funding created by the Program violates the Arizona  
22 Constitution's requirement that the State's school-financing scheme be "general and  
23 uniform," as well as its prohibition against special legislation. Gilbert Public Schools  
24 brings this action to have the Career Ladder Program declared unconstitutional pursuant to  
25 Ariz. Const. Art. XI, § 1 and/or Art. IV, Pt. 2, § 19 and to prohibit and enjoin the State  
26 Board of Education and Superintendent of Public Instruction from continuing their  
27 unconstitutional administration of the Career Ladder Program.  
28

## PARTIES AND JURISDICTION

8. Gilbert Public Schools is a political subdivision located in Maricopa County, Arizona. Gilbert Public Schools currently has an enrollment of more than 35,000 students and employs nearly 2,500 teachers.

9. Gilbert Public Schools has attempted to apply for inclusion in the Program but has been denied the opportunity to apply.

10. Gilbert Public Schools has also requested that the Legislature appropriate additional funds to allow for expansion of the Program but the Legislature has refused to do so.

11. Exclusion from the Program injures Gilbert Public Schools in, among other ways, its ability to attract and retain good and experienced teachers and to provide its students the educational benefits of the Program. Gilbert has already suffered irreparable injury by virtue of its exclusion from the Program, and will continue to suffer irreparable injury so long as it is excluded from the program.

12. Defendant State of Arizona bears responsibility for funding public schools within Arizona pursuant to Ariz. Const. Art. XI, § 1.

13. Defendant State Board of Education bears responsibility for "[e]xercis[ing] general supervision over and regulat[ing] the conduct of the public school system," "[r]ecommend[ing] to the legislature changes or additions to the statutes pertaining to schools," and "[a]id[ing] in the enforcement of laws relating to schools," pursuant to A.R.S. § 15-203(1), (8), & (11). Additionally, the State Board of Education is expressly charged with "approv[ing] additional districts to budget for a career ladder program . . . until all interested and qualified districts are included." Ariz. Sess. Laws ch. 319 § 16.

14. Defendant Tom Horne, Superintendent of Public Instruction, bears responsibility for "[s]uperintend[ing] the schools of this state," "apportion[ing] to the several counties the monies to which each county is entitled for the year," and

1 "[e]xecut[ing] ... the policies which have been decided upon by the state board,"  
2 pursuant to A.R.S. § 15-251(1), (3) & (5).

3 15. This Court has jurisdiction over this action pursuant to Ariz. Const. Art. 6,  
4 § 18 and R. Proc. Sp. Act. 1, as well as A.R.S. § 12-1831 *et seq.* and Ariz. R. Civ. P. 57,  
5 to declare the Career Ladder Program, as implemented, unconstitutional and grant the  
6 special action relief sought herein.

### 7 FACTUAL BACKGROUND

#### 8 I. History of the Program

9 16. In 1985, in order to improve the ability of school districts to attract, retain,  
10 and motivate good teachers, the Arizona Legislature created the Program as a five-year  
11 pilot program. In addition to providing teachers with the opportunity to earn higher  
12 salaries, the Program was designed to provide teachers with opportunities for professional  
13 growth and career advancement without leaving the classroom.

14 17. Initially, seven school districts were approved to participate in the pilot  
15 program. Seven additional school districts were approved between 1986 and 1987,  
16 bringing the total number of districts in the pilot program to fourteen.

17 18. In 1990, at the end of the pilot program, legislation was passed, authorizing  
18 expansion of the Career Ladder Program. Seven additional school districts were approved  
19 to participate in 1992-93, bringing the total number of districts in the Program to 21.

20 19. In 1992, the Arizona Legislature authorized further expansion of the  
21 Program, and another seven school districts were approved in 1993-94, bringing the total  
22 number of districts participating in the Program to 28.

23 20. The 1992 legislation stated that "[b]eginning in fiscal year 1994-1995, the  
24 [S]tate [B]oard [of Education] is authorized to approve additional districts to budget for a  
25 career ladder program ... *until all interested and qualified districts are included.*" Ariz.  
26 Sess. Laws ch. 319 § 16 (emphasis supplied).

27 21. However, the 1992 legislation also limited the State Board of Education's  
28 ability to authorize expansion of the Program. Specifically, the 1992 legislation provided

1 that the Board could expand the Career Ladder Program "*only* to the extent that the  
2 legislature appropriates, in advance, sufficient monies to cover the costs." 1992 Ariz.  
3 Sess. Laws ch. 246 § 3, *amending* 1990 Ariz. Sess. Laws ch. 319 § 16 (emphasis  
4 supplied).

5 22. Although the clear intent of the 1992 legislation was to allow for statewide  
6 expansion of the Program through additional appropriations, no additional appropriations  
7 have been made since 1994. Accordingly, no further expansion has ever been authorized.  
8 The 28 school districts that were approved to participate in the Career Ladder Program as  
9 of 1994 continue to be the only school districts participating in the Program today.

10 23. On October 4, 2006, Gilbert Public Schools sent a letter to the Career  
11 Ladder Coordinator at the DOE, asking it to provide Gilbert with the forms necessary to  
12 apply to participate in the Career Ladder Program. [Exhibit 1] In response, the DOE  
13 informed Gilbert Public Schools that it could *not* apply for inclusion into the Program  
14 because there are no funds available to expand the Program to allow for participation by  
15 additional districts. [Exhibit 2]

16 24. During the 2007 Legislative session, Gilbert requested that the Legislature  
17 appropriate additional funds so as to allow for expansion of the Program, but the  
18 Legislature refused to appropriate such additional funds.

## 19 II. How the Program Works

20 25. The Career Ladder Program is a performance-based compensation plan that  
21 provides incentives to teachers in the 28 participating school districts. The Program is an  
22 alternative to the traditional pay structure, and teachers who participate in the Program  
23 forgo the customary salary increases based on seniority and educational credits in  
24 exchange for compensation based on student achievement and professional development.  
25 Although teachers in Career Ladder districts may opt not to participate in the Program, at  
26 least 50% of the teachers in the district must participate in the Program in any given year  
or the district will lose its Career Ladder funding.

1        26. Each school district constructs its own "ladder," which includes progressive  
2 "levels" and progressive "steps" within each level, and places teachers on the ladder  
3 according to their performance. Each level and step of the ladder has its own salary range,  
4 and there must be specific criteria for placement at each level and step. Additionally, the  
5 "ladder" must provide for:

6            (a) Increasingly higher levels of student academic progress as measured  
7 by objective criteria;

8            (b) Increasingly higher levels of teaching skills;

9            (c) Increasingly higher levels of teacher responsibility;

10           (d) Professional growth; and

11           (e) Equal teacher pay for equal teacher performance.

### 12    **III. How the Program is Funded**

13        27. Financing for the Career Ladder Program is set forth in A.R.S. §§ 15-918.04  
14 and 918.05.

15        28. Under A.R.S. §§ 15-918.04 and 918.05, funding for the Program is derived  
16 by a formula based on student count. Once the Program has been fully implemented,  
17 Career Ladder districts may increase their base funding level by 5.5%. A portion of the  
18 funding is derived from an increase in the local property tax; state-appropriated funding  
19 provides the remainder.

20        29. This 5.5% increase in base level funding results in a significant increase in  
21 funds for teacher compensation to participating districts.

22        30. For example, in 2005-2006, the 28 participating districts were allowed to  
23 budget an additional \$68 million in total funds for the Career Ladder Program, more than  
24 \$35 million of which was funded by the State.

25        31. In 2006-2007, the 28 participating districts were allowed to budget an  
26 additional \$74 million for the Program, more than \$38 million of which was funded by the  
27 State.

1        32. The impact of the Career Ladder Program on the individual districts  
2 participating in the Program is also significant.

3        33. For example, neighboring participating districts such as Chandler and Mesa  
4 were allowed to budget more than \$6 million and \$15 million, respectively, for the  
5 Program in the 2005-2006 school year and received more than \$2.5 million and \$9.5  
6 million in state funding for the Program.

7        34. In 2006-2007, Chandler and Mesa were allowed to budget more than \$7  
8 million and \$16.8 million, respectively, and received state funding in excess of \$3 million  
9 and \$10 million.

10       35. School districts excluded from the Program, such as Gilbert Public Schools,  
11 are at a disadvantage in attracting and retaining good and experienced teachers because  
12 they do not receive the additional funding provided by the Program to compensate such  
13 teachers. In particular, Gilbert Public Schools has suffered irreparable injury in that it has  
14 lost teachers to neighboring participating districts because those districts were able to  
15 offer more money as a result of their participation in the Career Ladder Program. Gilbert  
16 will continue to suffer irreparable injury so long as it is excluded from the Program.

17 **IV. The Program Violates the Arizona Constitution's "General and Uniform"**  
18 **Requirement**

19       36. The Arizona Constitution provides that "[t]he Legislature shall enact such  
20 laws as shall provide for the establishment of a *general and uniform* public school system  
21 ...." Ariz. Const. Art. XI, § 1 (the "General and Uniform Clause") (emphasis supplied).

22       37. This provision, the General and Uniform Clause, requires that the  
23 Legislature's funding scheme provide sufficient funds to educate children on substantially  
24 equal terms. School financing systems which themselves create gross disparities are *not*  
25 general and uniform.

26       38. The Program established by the Legislature results in significant funding  
27 disparities between participating and non-participating districts and thus violates the  
28 General and Uniform Clause.

1        39. As set forth above, 28 school districts participate in the Program; 209 have  
2 been denied the opportunity to participate since expansion of the Program ceased in 1994.  
3 In 2005-06, districts participating in the Career Ladder Program were able to increase  
4 their budgets by a total of more than \$68 million and received state funding in excess of  
5 \$35 million for the Program. In 2006-2007, districts participating in the Career Ladder  
6 Program were able to increase their budgets by a total of more than \$74 million, and  
7 received state funding in excess of \$38 million for the Program.

8        **V. The Program Violates the Arizona Constitution's Prohibition Against Special**  
9        **Legislation.**

10        40. The Arizona Constitution provides that "[n]o local or special laws shall be  
11 enacted ... [g]ranting to any corporation, association, or individual, any special or  
12 exclusive privileges, immunities, or franchises." Ariz. Const. Art. IV, Pt. 2, § 19. The  
13 purpose of Ariz. Const. Art. IV, Pt. 2, § 19 is to prevent special benefits from being  
14 bestowed upon certain locations or groups, but not others.

15        41. Legislation is constitutionally invalid special legislation where the  
16 classification in the legislation is not: (1) rationally related to a legitimate legislative  
17 purpose; (2) sufficiently general to encompass all members similarly situated; and (3)  
18 sufficiently elastic to allow members to move in and out of the class.

19        42. The Program, which bestows special benefits upon just 28 school districts  
20 (out of 237 statewide), violates the Arizona Constitution's prohibition against special  
21 legislation, set forth in Ariz. Const. Art. IV, Pt. 2, § 19. As implemented, the Program is  
22 not rationally related to a legitimate legislative purpose, is not sufficiently general to  
23 encompass all similarly situated school districts, and is not sufficiently elastic to allow  
24 districts to move in and out of the class.

25                                **FIRST CLAIM FOR RELIEF**  
26        **(DECLARATORY JUDGMENT RELIEF: GENERAL AND UNIFORM CLAUSE)**

27        43. Plaintiff Gilbert Public Schools incorporates in this claim all of the  
28 foregoing allegations.



1        44. Pursuant to A.R.S. §12-1831 *et seq.* and Ariz. R. Civ. Pro. 57, Plaintiff—as  
2 a party whose rights, status or other legal relations are affected by the statute—seeks an  
3 order from this Court declaring the Career Ladder Program (A.R.S. §§ 15-918 to 918.05),  
4 as implemented, unconstitutional in violation of Art. XI, § 1 of Arizona's Constitution.

5        45. This is an actual and justiciable controversy and such judgment or decree  
6 will terminate the uncertainty and controversy giving rise to this proceeding as required  
7 by A.R.S. § 12-1836.

8  
9                                    **SECOND CLAIM FOR RELIEF**  
                                  **(DECLARATORY JUDGMENT RELIEF: SPECIAL LEGISLATION)**

10        46. Plaintiff Gilbert Public Schools incorporates in this claim all of the  
11 foregoing allegations.

12        47. Pursuant to A.R.S. §12-1831 *et seq.* and Ariz. R. Civ. Pro. 57, Plaintiff—as  
13 a party whose rights, status or other legal relations are affected by the statute—seek an  
14 order from this Court declaring the Career Ladder Program (A.R.S. §§ 15-918 to 918.05),  
15 as implemented, unconstitutional in violation of Art. IV, Pt. 2, § 19 of Arizona's  
16 Constitution.

17        48. This is an actual and justiciable controversy and such judgment or decree  
18 will terminate the uncertainty and controversy giving rise to this proceeding as required  
19 by A.R.S. § 12-1836.

20  
21                                    **THIRD CLAIM FOR RELIEF**  
                                  **(SPECIAL ACTION RELIEF IN THE NATURE OF PROHIBITION AGAINST**  
22 **THE STATE BOARD OF EDUCATION AND SUPERINTENDENT OF PUBLIC INSTRUCTION)**

23        49. Plaintiff Gilbert Public Schools incorporates in this claim all of the  
24 foregoing allegations.

25        50. Because the Career Ladder Program (A.R.S. §§ 15-918 to 918.05), as  
26 implemented, is unconstitutional, Defendants State Board of Education and  
27 Superintendent of Public Instruction lack jurisdiction or legal authority to continue  
28 administration of the Career Ladder Program. Plaintiffs are entitled to special action relief

1 pursuant to R. Pro. Sp. Act. 3(b) prohibiting and enjoining the State Board of Education  
2 and Superintendent of Public Instruction from continuing to administer the Career Ladder  
3 Program.

4 **FOURTH CLAIM FOR RELIEF**  
5 **(INJUNCTIVE RELIEF)**

6 51. Plaintiff Gilbert Public Schools incorporates in this claim all of the  
7 foregoing allegations.

8 52. In the event that declaratory and special action relief are insufficient to  
9 prevent the unconstitutional administration of the Career Ladder Program, Plaintiff  
10 requests, in the alternative, temporary, preliminary and permanent injunctive relief to  
11 enjoin the State Board of Education and Superintendent of Public Instruction from  
12 administering the Career Ladder Program in violation of Arizona's Constitution.

13 53. As alleged in this Complaint, the Career Ladder Program is unconstitutional.  
14 Plaintiff thus has a strong likelihood of success on the merits and will continue to suffer  
15 irreparable harm if relief is not granted.

16 54. Given the nature of Plaintiff's claim that the Career Ladder Program is  
17 unconstitutional, Plaintiff lacks an adequate remedy at law.

18 55. The irreparable injury to Plaintiff is substantial, and granting the requested  
19 injunctive relief will not cause the State Board of Education or Superintendent of Public  
20 Instruction to suffer any harm.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff Gilbert Public Schools requests relief as follows:

23 A. That the Court issue an order declaring the Career Ladder Program  
24 (specifically, A.R.S. §§ 15-918 to 918.05) unconstitutional in violation of Art. XI, § 1  
25 and/or Art. IV, Pt. 2, § 19 of Arizona's Constitution.

26 B. That the Court grant Plaintiff special action relief prohibiting the State  
27 Board of Education and Superintendent of Public Instruction from continuing their  
28 unconstitutional administration of the Career Ladder Program.


1 C. That the Court grant Plaintiff injunctive relief enjoining the State Board of  
2 Education and Superintendent of Public Instruction from continuing their unconstitutional  
3 administration of the Career Ladder Program.

4 D. That the Court grant Plaintiff their attorneys' fees and costs in challenging  
5 the unconstitutionality of the Legislation pursuant to A.R.S. §§12-348 and 12-1840, R.  
6 Pro. Sp. Act. 4(g), and the private attorney general doctrine.

7 E. For such other and further relief as may be appropriate.

8 Dated: October 1, 2007

9 PERKINS COIE BROWN & BAIN P.A.

10  
11 By 

12 Paul F. Eckstein

13 Lee Stein

14 Rebecca K. Setlow

15 M. Bridget McMullen

16 2901 N. Central Avenue, Suite 2000

17 Phoenix, AZ 85012-2788

18  
19 Attorneys for Plaintiff  
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28

**VERIFICATION**

STATE OF ARIZONA                    )  
County of Maricopa                ) ss.

Clyde R. Dangerfield, being first duly sworn upon oath, deposes and says:

That he is the Assistant to the Superintendent of Gilbert Public Schools, and in such capacity is authorized to make this verification for and on behalf of said Plaintiff; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true based on his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and, as to those matters, he believes them to be true.

Clyde R. Dangerfield  
Clyde R. Dangerfield

SUBSCRIBED AND SWORN to before me this 25 day of September, 2007.



Sherry Ward  
Notary Public

My Commission Expires:

8/21/10

LEGAL13274522.4

# **EXHIBIT 1**



Gilbert Public Schools

COPY

Superintendent  
Bradley K. Barrett,  
Ph.D.

**GPS Governing  
Board**

**President**  
Thad V. Stump  
**Clerk**  
Helen D. Hollands  
**Members**  
Ron J. Dunham, Ph.D.  
Traci L. Klein  
Linda Rollans

October 4, 2006

Lisa Kelley  
Career Ladder Coordinator  
Academic Achievement Division  
Arizona Department of Education  
1535 West Jefferson Street, Bin 31  
Phoenix, Arizona 85007

Re: Application for Initial Program Approval in the Career Ladder Program

Dear Ms. Kelley:

Pursuant to A.R.S. §15-918, the Gilbert School District Governing Board is interested in applying for initial program approval and ultimately becoming a fully participating district in the Career Ladder Program.

We have visited the Arizona Department of Education's website to obtain the application materials and instructions necessary to apply for initial approval for the 2006-2007 school year. However, the only materials available on that site are *reapplications* for those districts already participating in the Career Ladder Program. No information is provided to districts that wish to apply for the first time and join the 28 other districts already participating in the program.

Because the November 15 deadline for applications is fast approaching, I would appreciate you providing me the application and instructions necessary for Gilbert School District to apply for initial program approval for the 2006-2007 year, or directing me to the location in which I might find such materials.

Sincerely,

GILBERT PUBLIC SCHOOLS

Nikki Blanchard  
Assistant Superintendent

cc: Brad Barrett, Ph.D., Superintendent

# **EXHIBIT 2**



State of Arizona  
Department of Education

**Tom Horne**  
Superintendent of  
Public Instruction

October 27, 2006

Nikki Blanchard  
Assistant Superintendent  
Gilbert Public School  
140 S. Gilbert Rd.  
Gilbert, AZ 85296

Re: Inquiry to Participate in the Arizona Career Ladder Program

Dear Ms. Blanchard:

Thank you for your inquiry into participating in the Arizona Career Ladder Program. Unfortunately at this time no new districts are being allowed to petition for funding.

In 1994 legislation passed freezing the funding contributions for Career Ladder. Since that time no additional funds have been appropriated to increase the number of districts allowed to participate in the program.

I will keep your letter on file as verification of your interest in the program and report to you if there are any changes in funding appropriations for next year.

Best Wishes,

A handwritten signature in cursive script that reads "Lisa Kelley".

Lisa Kelley, NBCT  
Education Program Specialist

cc: Clyde Dangerfield